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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,820	09/04/2003	Yao-Chang Lin	930074-2010	9413

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EXAMINER

JOHNSON, JERROLD D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,820

Applicant(s)

LIN, YAO-CHANG

Examiner

Jerrold Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3,6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burrows et al., US Patent 5,139,140 in view of Young, US Patent 3,420,360.

Burrows discloses a cigarette box comprising a box body adapted to receive cigarette sticks therein, a flip-top lid connected pivotally to said box body, the lid having a top portion formed with an opening (at location of panel 91 once that panel is removed) the opening having a size smaller than the opening closed by the flip top lid, a box body, and a cover 120 having a size corresponding to that of said opening.

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Burrows does not stipulate the size of the opening, but it appears that it may be larger than a single cigarette stick. Burrows also does not disclose the cover having a peripheral edge that includes at least one tearable section connected to said top portion of said lid by a weakened seam such that said cover can be torn from said lid at said weakened seam to uncover said opening. Burrows also does not disclose a peripheral edge of the cover that includes a linear connecting section connected foldably to said top portion of said lid, an operating section opposite to said connecting section, and a pair of said tearable sections extending between said connecting section and said operating section, said operating section being operable to lift said cover away from said top portion of said lid so as to tear said cover from said lid at said tearable sections, as is claimed in claim 2.

Burrows also does not disclose an operating section being disconnected from said top portion of the lid as is claimed in claim 3.

Burrows also does not disclose a peripheral edge of said cover further including an operating section, said tearable section extending between opposite ends of said operating section, said operating section being operable to lift said cover away from said top portion of said lid so as to tear said cover from said lid at said tearable section as is claimed in claim 6.

And, Burrows does not disclose an operating section being disconnected from said top portion of said lid such that said cover can be severed completely from said lid when said cover is torn from said lid at said tearable section as is claimed in claim 7.

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Young discloses an opening 37 sized for a single cigarette. Like the opening 91 and cover 120 of Burrows, the opening 37 of Young is the secondary opening for the cigarette package. Young also discloses a cover 36A (referred incorrectly in column 2, line 9 as tab "36" not 36A) having a peripheral edge that appears to include at least one tearable section connected to said top portion of said lid by a weakened seam such that said cover can be torn from said lid at said weakened seam to uncover said opening as is claimed in claim 1.

Young also discloses a peripheral edge of the cover that includes a linear connecting section connected foldably to said top portion of said lid, an operating section opposite to said connecting section, and appears to disclose a pair of said tearable sections extending between said connecting section and said operating section (cover is shown already torn), said operating section being operable to lift said cover away from said top portion of said lid so as to tear said cover from said lid at said tearable sections, as is claimed in claim 2.

Young further discloses an operating section being disconnected from said top portion of the lid as is claimed in claim 3 (see Figs. 3 or 4 where operating section is disconnected).

Young discloses a peripheral edge of said cover further including an operating section, and appears to disclose a tearable section (cover is shown already torn) extending between opposite ends of said operating section, said operating section being operable to lift said cover away from said top portion of said lid so as to tear said cover from said lid at said tearable section as is

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claimed in claim 6. Note that the claim does not require the tearable section to extend in an uninterrupted manner.

And, Young discloses an operating section being disconnected from said top portion of said lid such that said cover can be severed completely from said lid when said cover is torn from said lid at said tearable section, as is claimed in claim 7. Specifically, the user can sever the cover completely from the lid, if the user so desires.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the cigarette box of Burrows with the tearable cover and opening as taught by Young, as such an opening limits the amount of cigarettes that can be dispensed at one time, as well as providing a simpler structure to provide this function than was provided by Burrows.

Although Young specifically describes the tearable feature (perforations producing a weakened seam) with respect to the cover 35A, Young remains silent as to the specific manner in which cover 36A is torn from the band, but does, in fact, show the cover 36A having been torn from the band 36. It would have been obvious at the time of the invention to one of ordinary skill in the art to use the same tearable feature (perforations) disclosed in the cover 35A, for the cover 36A as the perforations used to create the weakened seam for cover 35A would also work with respect to cover 36A. To provide a weakened seam to make an element tearable within a package is common, as is evidenced by the cover 35A of Young, as it is an inexpensive and simple manner to provide an opening into a package.

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Claims 1-4,6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burrows et al., US Patent 5,139,140 in view of Young, US Patent 3,420,360, and further in view of Wein, US Patent 5,044,503.

Burrows discloses a cigarette box comprising a box body adapted to receive cigarette sticks therein, a flip-top lid connected pivotally to said box body, the lid having a top portion formed with an opening (at location of panel 91 once that panel is removed) the opening having a size smaller than the opening closed by the flip top lid, a box body, and a cover 120 having a size corresponding to that of said opening.

Burrows does not stipulate the size of the opening, but it appears that it may be larger than a single cigarette stick. Burrows also does not disclose the cover having a peripheral edge that includes at least one tearable section connected to said top portion of said lid by a weakened seam such that said cover can be torn from said lid at said weakened seam to uncover said opening. Burrows also does not disclose a peripheral edge of the cover that includes a linear connecting section connected foldably to said top portion of said lid, an operating section opposite to said connecting section, and a pair of said tearable sections extending between said connecting section and said operating section, said operating section being operable to lift said cover away from said top portion of said lid so as to tear said cover from said lid at said tearable sections, as is claimed in claim 2.

Burrows also does not disclose an operating section being disconnected from said top portion of the lid as is claimed in claim 3.

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Burrows also does not disclose a peripheral edge of said cover further including an operating section, said tearable section extending between opposite ends of said operating section, said operating section being operable to lift said cover away from said top portion of said lid so as to tear said cover from said lid at said tearable section as is claimed in claim 6.

And, Burrows does not disclose an operating section being disconnected from said top portion of said lid such that said cover can be severed completely from said lid when said cover is torn from said lid at said tearable section as is claimed in claim 7.

Additionally, Burrows does not disclose the operating section being formed with an upward tab, as is claimed in claims 4 and 8.

Young discloses an opening 37 sized for a single cigarette. Like the opening 91 and cover 120 of Burrows, the opening 37 of Young is the secondary opening for the cigarette package. Young also discloses a cover 36A (referred incorrectly in column 2, line 9 as tab "36" not 36A) having a peripheral edge that appears to include at least one tearable section connected to said top portion of said lid by a weakened seam such that said cover can be torn from said lid at said weakened seam to uncover said opening as is claimed in claim 1.

Young also discloses a peripheral edge of the cover that includes a linear connecting section connected foldably to said top portion of said lid, an operating section opposite to said connecting section, and appears to disclose a pair of said tearable sections extending between said connecting section and said operating section (cover is shown already torn), said operating section being

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operable to lift said cover away from said top portion of said lid so as to tear said cover from said lid at said tearable sections, as is claimed in claim 2.

Young further discloses an operating section being disconnected from said top portion of the lid as is claimed in claim 3 (see Figs. 3 or 4 where operating section is disconnected).

Young discloses a peripheral edge of said cover further including an operating section, and appears to disclose a tearable section (cover is shown already torn) extending between opposite ends of said operating section, said operating section being operable to lift said cover away from said top portion of said lid so as to tear said cover from said lid at said tearable section as is claimed in claim 6. Note that the claim does not require the tearable section to extend in an uninterrupted manner.

And, Young discloses an operating section being disconnected from said top portion of said lid such that said cover can be severed completely from said lid when said cover is torn from said lid at said tearable section, as is claimed in claim 7. Specifically, the user can sever the cover completely from the lid, if the user so desires.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the cigarette box of Burrows with the tearable cover and opening as taught by Young, as such an opening limits the amount of cigarettes that can be dispensed at one time, as well as providing a simpler structure to provide this function than was provided by Burrows.

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Although Young specifically describes the tearable feature (perforations producing a weakend seam) with respect to the cover 35A, Young remains silent as to the manner in which cover 36A is torn from the band 36.

Wein, US Patent 5,044,503 discloses a cover in Figs. 36-38 having an operable section 166 comprising an upward tab (see Fig. 38), tearable section(s) 169, 170 connected via a weakened seam, and a linear connecting section 165 which interrupts the tearable section(s).

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the cigarette box of Burrows in view of Young, with the specific structure of an operable section 166 comprising an upward tab (see Fig. 38), tearable section(s) 169, 170 connected via a weakened seam, and a linear connecting section 165 as taught by Wein, as such a cover construction is simple in manufacture and would provide the cover both structure integrity before being torn and ease of tearing.

Claims 5,9,11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burrows in view of Young and further in view of Wein as applied to claims 1-4,6-8 and 10 above, and further in view of Adams, US Patent 2,619,226.

Burrows in view of Young and further in view of Wein discloses the claimed features, but does not specifically disclose indicia, or circular or rectangular openings.

Adams in Fig. 3 and 7 discloses indicia, as well as the circular and rectangular openings. As recited in Column 2, line 47, the wall 11 is punched out

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(torn) to define covers 26. The patent is silent as to when this punching out occurs as it shows the cover subsequent to being torn.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the cigarette box of Burrows in view of Young and further in view of Wein with the specific opening configurations and indicia as taught by Adams, as circular and rectangular configurations add attractiveness and the indicia adds ease of use to the cover. It is understood that the specific configurations being circular or rectangular have not been disclosed in the present application as being of particular importance to the functioning of the cover, and accordingly these limitations are not patentably significant.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burrows in view of Young and further in view of Wein as applied to claims 1-4,6-8 and 10 above, and further in view of Benzon-Petersen, US Patent 3,533,550.

Burrows in view of Young and further in view of Wein discloses the claimed features, but does not specifically disclose weakened seams formed by scoring as is recited in claim 10.

Benzon-Petersen discloses the use of scored seams to create a weakened seam. Scored seams have long been known as an equivalent structure to perforated lines (such as disclosed by both Young and Wein) for the creation of weakened seams in packaging. Accordingly, It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the cigarette box of Burrows in view of Young and further in view of Wein with the scored seam as

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taught by Benzon-Petersen in the creation of weakened seams, as scored seams are more attractive in appearance than perforated seams.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rausing, US Patent 4,998,668 discloses an upward tab disposed on a cover 7.

Dygert et al., US Patent 5,462,169 discloses a severable cover 112 where a single uninterrupted tearable section is connected to opposite ends of an operable section.

Walter, US Patent 6,050,402 discloses a cover 28 having tearable sections formed by weakened seams created by perforations.

Johnstone, US Patent 1,456,060 discloses in Fig. 7 a cover created by a tearable sections 15b and a linear connecting section 17b.

Stewart, US Patent 6,471,122 discloses in Figs. 14a-15b various coves. Stewart also describes in column 5 lines 56 and 57 that weakened seams can be created in a variety of ways including cuts (scores) and perforations.

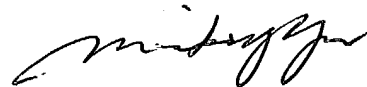
Matern, US Patent 2,931,554 discloses a cover 24 created with an operable section at 25 and two pair of tearable sections 24a and 24b. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jdj



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